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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/763,312	04/24/2001	Daniel Engvall	P/2432-38	5056

2353 7590 06/28/2002

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EXAMINER

KOO, BENJAMIN KIM

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 06/28/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/763,312

Applicant(s)

ENGVALL ET AL.

Examiner

Benjamin Koo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 April 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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DETAILED ACTION

Specification

1. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 4, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Joers '048. Joers shows a transportable apparatus comprising: pressure variation means (Fig. 2) housed in an inner casing (2) partially enclosed by an outer casing (A) providing an opening covered by a removable hinged cover (B), a storage compartment (4), a flexible tube (17), an ear plug (E) administering pressure pulses, and a panel for control (2).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2, 3, and 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Joers alone. Joers shows all the structural and functional limitations of the

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invention as set forth in the previous paragraphs of this office action including an electrical connector (3) but does not explicitly show a removable first portion, one piece material and the opening, and a battery. Regarding the removable first portion, such a limitation would be considered an obvious design choice that does not affect the use of the invention. It has been held that the mere fact that a given structure is integral does not preclude its consisting of various elements. Nerwin v. Erlichman, 168 USPQ 177, 179 (PTO Bd. of Int. 1969). Regarding the one piece of material, such a limitation would also be considered an obvious design choice that does not affect the use of the invention. It has been held that the use of a one piece construction is merely a matter of obvious engineering choice. In re Larson, 144 USPQ 347 (CCPA 1965). Regarding the opening that the tube passes through, although not explicitly shown in the drawings, the tube inherently *must* pass through some opening in order to be connected to the pressure means. Regarding the battery, such a limitation would be considered an obvious choice of design for the sake of convenience and portability. Joers is obvious designed for portable use and requires electrical power, the use of batteries is old and well known to provide an obvious art-recognized alternative power source. Regarding the range of pressure that is not clearly claimed, such ranges would be considered obvious to one of ordinary skill to suit various needs and applications.

Claim Rejections - 35 USC § 112

6. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase "30 cm of water column" is not understood and

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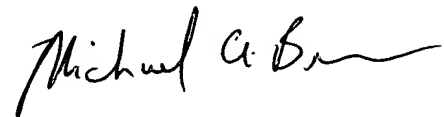
does not seem to constitute standard pressure units. Claims have been interpreted as best understood.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin Koo whose telephone number is 703-308-2657. The examiner can normally be reached on M, W-F; 9:30-8.

The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-0758 for regular communications and 703-746-4892 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

bk
June 24, 2002



Michael A. Brown
Primary Examiner